IN THE HIGH COURT OF DELHI

Crl.M.C. No.5023/2005

#	Satyam Chugh	.....	Petitioner
!	through:	Mr.K.K.Sud, Senior Advocate with Mr.A.A.Aron, Mr.Anish Shreshta and Mr.Atul Sahi.	
		VERSUS	
$	State & Anr.	.....	Respondents
^	through:	Mr.Jaideep Malik for the State.	
		Mr.Arvind Kumar Shukla, Ms.Sriparna Chatterjee, Mr.Atul Kumar and Ms.Soumita Chatterjee for the complainant.	

RESERVED ON : 28.09.2007

% DATE OF DECISION: 23.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Satyam Chugh prays that FIR No.265/05 under Section 376 IPC PS Nabi Karim be quashed and compensation be awarded to him as per guidelines laid down by the Supreme Court in the decision reported as 1994 (4) SCC 260 *Joginder Kumar vs. State of Uttar Pradesh*.

2. In support of the petition, during arguments Shri K.K.Sud, learned senior counsel for the petitioner relied upon the 6 under noted decisions:-

(1) *Uday vs. State of Karnataka* (2003) 4 SCC 46.

(2) *Deelip Singh @ Dilip Kumar vs. State of Bihar* (2005) 1 SCC 88.

(3) *Yedla Srinivasa Rao vs. State of A.P.* 2006 (4) Crimes 281.

(4) *Manish Kumar Jayant vs. State & Anr.* 2005 (3) JCC 1611.

(5) *Abhoy Pradhan vs. State of West Bengal* 1999 Cri.L.J. 3534.

(6) *Sansar Chand vs. State of Himachal Pradesh* 1999 Cri.L.J. 3538.

3. Opposing the plea, Shri Jaideep Malik, learned counsel for the State assisted by Mr.Arvind Kumar Shukla, learned counsel for the complainant urged that no case is made out for quashing the FIR.

4. I may point out that investigation is complete and a charge sheet has been filed. Thus, as agreed between the learned counsel for the parties matter was considered strictly within the confines of power which this Court can exercise under Section 482 of the Code of Criminal Procedure while considering a FIR. Meaning thereby, learned counsel for the parties restricted

submissions to the FIR and eschewed any reference to the charge-sheet which has been filed.

5. The FIR was registered pursuant to a complaint lodged by the prosecutrix RM aged 34 years when she filed the complaint.

6. RM appears to be an unfortunate lady. She was married in 1996. Her husband went missing. She obtained an ex-parte divorce in the year 2002.

7. Her alleged ordeal with the petitioner started, as per the FIR, when she placed an advertisement in a matrimonial site on the inter-net in July 2002. She states in the FIR that she gave her particulars on the website as a 30 years old divorcee. In August 2002 she received a marriage proposal from the petitioner who though was just 24 years, a fact which was learnt subsequently, disclosed his age as 29 years. He informed that he was born in the year 1974. He proposed a matrimonial alliance. That Satyam started calling her daily from September 2002 and stated that though he was about 2 years younger to her, it hardly mattered. Since Satyam was at Delhi she reached Delhi in December 2002 and stayed at a guest-house in Malviya Nagar. Satyam used to meet her daily. They spoke to each other in the presence of each other. She returned back to Nagpur on 5.1.2003. The two would talk daily for hours together. In March 2003 Satyam told her to come to Delhi to finalize the marriage

plans. He arranged stay for her at Hotel Ajanta in Paharganj. She came to Delhi to finalize the marriage proposal. Satyam told her that his sister was to get married and therefore he had to postpone their marriage plans. She returned back to Nagpur. They continued to interact daily with each other. He called her once again to visit him at Delhi in May. Saying that he would marry her, she was enticed into a physical relationship. She was made to stay once again at Hotel Ajanta, Paharganj. She talked about the marriage. Satyam told her that his younger brother's senior secondary result had just been announced. His brother has not done too well. He had to make arrangements for his brother to be admitted in a good college. On said pretext he postponed the marriage plan. That in July 2003 Satyam came to Nagpur and stayed at Hotel Amrita. He assured her with marriage and persuaded her for another physical encounter. He assured her that he would marry her in August 2003. That he took her consent by fraud and on false assurance of marriage. That in August 2003 Satyam told her to reach Bangalore so that they could marry in an Arya Samaj Mandir. That she inquired as to why he was marring contrary to social customs in the absence of his parents and that too at a far off place in Bangalore. That he told her that his parents had left the choice of a life-partner to him. That her parents would accept her. That they stayed at Hotel Rama in Bangalore. That for a third time they had physical

relations. She gave her consent as she was assured of marriage. That at Bangalore he kept on postponing the day of the marriage. They stayed at Bangalore for about 15 days. She went back to Nagpur and he to Delhi. In September 2003 she found that she was pregnant. Satyam was informed. He coerced her to terminate the pregnancy. She did so. That by October 2003 Satyam was introduced to her mother and sister. He told them not to worry. That they continued to speak to each other. She was assured that he would marry her. That Satyam postponed the marriage on the ground that he had suffered some financial losses. That soon he started avoiding her. That she managed to find out that Satyam had shifted residence to Ghaziabad. She found out his telephone number. When she called, his mother responded. She told Satyam's mother as to what had happened. That Satyam's mother abused her. That on 7.8.2004 she came to Delhi and contacted Satyam. He refused to marry her. But soon thereafter assured her that all would be fine. That on 21.9.2004 Satyam came to her hotel room and once again forced her into sex persuading her that he would get married to her. That soon thereafter Satyam told her to go back home and forget about everything.

8. Picking on the FIR, Shri K.K.Sud, learned senior counsel for the petitioner urges that from a bare reading of the FIR it is apparent that the complainant was in deep love with Satyam and

aged 30 years was a matured person to understand the moral worth of her actions. Being a divorcee, she was aware of what is a matrimonial bond. That it was not any assurance of marriage which led complainant into the sexual relationship with his client but it was love which drove the two to the bed.

9. Learned senior counsel analyzed the FIR as under:-

(a) The statements in the FIR that the complainant and Satyam spoke to each other daily from September 2002 and continued to do so till January 2003 evidences a deep love bond.

(b) That the physical relationship between the parties was stated to be in May. But, twice earlier, the two had met. If intention of Satyam was to cheat the complainant and sex was on his mind, he would have seduced/induced the complainant into sex when the two met for the first time in December 2002.

(c) That when the two went to Bangalore, as per the complainant the visit was with the intention of getting married at Bangalore. Admittedly, marriage did not took place, yet the couple had sex at Bangalore. The complainant has stated that she told Satyam that it was unusual for the marriage to take place away from the presence of the family members and in a remote city, meaning thereby, the complainant had

apprehensions that the marriage would not materialize. Coupled with the fact that the complainant had mentioned in the FIR that she was aware of her being elder and also a divorcee as also the fact that in the Indian society such marriage may not be acceptable to the parents of Satyam had expressed to Satyam whether she would be acceptable in his family. The apprehension of the complainant as expressed in the FIR was prima facie sufficient to infer that while giving consent for sex, complainant was aware that marriage between the two was a distant possibility, meaning thereby consent for sex was motivated by the deep love bond.

10. With reference to the decision of the Supreme Court in *Uday's* case (supra) learned senior counsel pointed out that in said case, Hon'ble Supreme Court noted that as per the prosecutrix of said case, she was aged 19 years, meaning thereby, was a mature person. That the prosecutrix was aware that she and the accused came from different castes and marriage may not be possible. In any event, their marriage was bound to be seriously opposed by the family members and yet prosecutrix went into a sexual encounter with the accused. That she was sufficiently intelligent to understand the significance and moral guilt of the act she was consenting to.

11. Counsel pointed out that from afore-noted facts, Supreme Court opined that the prosecutrix freely exercised a choice between resistance and assent. She knew the consequences of her act. Under the circumstances, it was held that the prosecutrix freely, voluntarily and consciously consented to having sexual intercourse with the accused. That it was held that her consent was not in consequence of any misconception of fact.

12. Learned senior counsel urged that ratio of *Uday's* case (supra) was followed with approval by the Supreme Court in *Deelip Singh's* case (supra). That it was consistently followed in 4 other cases noted in para 2 above.

13. In *Uday's* case (supra), Supreme Court considered the definition of rape as defined under Section 375 IPC with reference to circumstance second out of six circumstances as enumerated in Section 375 IPC having regard to Section 90 of IPC which deals with consent given under fear or misconception.

14. It would be useful to note Section 375 and Section 90 of the IPC. They read as under:-

> "**375. Rape.**– A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-
>
> *First.* - Against her will.
>
> *Secondly.* - Without her consent.

Thirdly. - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. - With her consent, when the man knows that he is not her husband, and that consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. - With or without her consent, when she is under sixteen years of age.

Explanation.– Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.– Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

"**90. Consent known to be given under fear or misconception.**– A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.– if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.– unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

15. Dealing with the submission of learned counsel for the accused and as noted in para 10 in the decision in *Uday's* case (supra) that a belief that the promise of marriage was meant to be fulfilled is not a misconception of fact and that the question of misconception of fact will arise only if the act consented to is believed by the person consenting to be something else and on that pretext sexual intercouse is committed, the Hon'ble Judges of the Supreme Court referred to consent as defined in Stroud's Judicial Dictionary and as explained and applied in certain decisions.

16. It was noted by their Lordships in paras 10 to 16 of the report in *Uday's* case (supra) as under:-

> "10. ..... In *Stroud's Judicial Dictionary* (5th Edn.) p.510 "consent" has been given the following meaning:
>
> > "Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side."
>
> It refers to the case of *Holman v. R.* 1970 WAR 2 wherein it was held that:-
>
> > "there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is consent".
>
> Similar was the observation in *R. v. Olugboja* (1981) 3 WLR 585 wherein it was observed that "consent in rape covers states of mind ranging widely from actual desire to reluctant acquiescence, and the issue of consent should not be left to the jury without some further direction". Stephen J. in R. v. Clarence (1888) 22 QBD 23 observed: (All ER p.144 C-D)

> "It seems to me that the proposition that fraud vitiates consent in criminal matters is not true if taken to apply in the fullest sense of the word, and without qualification. It is too short to be true, as a mathematical formula is true."

Wills, J. observed: (All ER p.135 I)

> "That consent obtained by fraud is no consent at all is not true as a general proposition either in fact or in law. If a man meets a woman in the street and knowingly gives her bad money in order to procure her consent to intercourse with him, he obtains her consent by fraud, but it would be childish to say that she did not consent."

11. Some of the decisions referred to in *Words and Phrases*, Permanent Edition, Vol.8A at p.205 have held:

> "that adult female's understanding of nature and consequences of sexual act must be intelligent understanding to constitute 'consent'. Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. Legal consent, which will be held sufficient in a prosecution for rape, assumes a capacity to the person consenting to understand and appreciate the nature of the act committed, its immoral character, and the probable or natural consequences which may attend it".

12. The courts in India have by and large adopted these tests to discover whether the consent was voluntary or whether it was vitiated so as not to be legal consent. In *Rao Harnarain Singh Sheoji Singh v. State* AIR 1958 Punj. 123 it was observed: (AIR p.126, para 7)

> "7. A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent, on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act, but

after having freely exercised a choice between resistance and assent.

Submission of her body under the influence of fear or terror is no consent. There is a difference between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure."

13. The same view was expressed by the High Court of Kerala in *Vijayan Pillai v. State of Kerala* (1989) 2 Ker. LJ 234. Balakrishnan, J., as he then was, observed: (Ker.L.J. pp.238-39, para 10)

"*10.* The vital question to be decided is whether the above circumstances are sufficient to spell out consent on the part of PW 1. In order to prove that there was a consent on the part of the prosecutrix it must be established that she freely submitted herself while in free and unconstrained possession of her physical and mental power to act in a manner she wanted. Consent is an act of reason accompanied by deliberation, a mere act of helpless resignation in the face of inevitable compulsion, non-resistance and passive giving in cannot be deemed to be 'consent'. Consent means active will in the mind of a person to permit the doing of the act of and knowledge of what is to be done, or of the nature of the act that is being done is essential to a consent to an act. Consent supposes a physical power to act, a moral power of acting and a serious and determined and free use of these powers. Every consent to act involves submission, but it by no means follows that a mere submission involves consent. In *Jowitt's Dictionary of English Law,* IInd Edn., Vol.I explains 'consent' as follows:-

'An act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things – a physical power, a mental power and a free and serious use of them. Hence it is that if

consent be obtained by intimidation, force, mediated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.'"

14. In *Anthony, In re* AIR 1960 Mad. 308, Ramaswami, J. in his concurring opinion fully agreed with the principle laid down in *Rao Harnarain Singh* case AIR 1958 Punj. 123 and went on to observe: (AIR pp.311-12, para 21)

> "A woman is said to consent only when she agrees to submit herself while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former."

15. The same view has been reiterated by the Punjab High Court in *Arjan Ram Naurata Ram v. State* AIR 1960 Punj. 303, by the Rajasthan High Court in *Gopi Shanker v. State of Rajasthan* AIR 1967 Raj. 159 and by the Bombay High Court in *Bhimrao Harnooji Wanjari v. State of Maharashtra* 1975 Mah. L.J. 660.

16. The High Court of Calcutta has also consistently taken the view that the failure to keep the promise on a future uncertain date does not always amount to misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. In *Jayanti Rani Panda v. State of W.B.* 1984 Cri.L.J. 1535 the facts were somewhat similar. The accused was a teacher of the local village school and used to visit the residence of the prosecutrix. One day during the absence of the parents of the prosecutrix he expressed his love for her and his desire to marry her. The prosecutrix was also willing and the accused promised to marry her once he obtained the consent of his parents. Acting on such assurance the prosecutrix started cohabiting with the accused and this continued for several months during which period the accused spent several nights with her. Eventually when she conceived and insisted that the marriage should be performed as quickly as possible, the accused suggested an abortion and agreed to marry her later. Since the proposal

was not acceptable to the prosecutrix, the accused disowned the promise and stopped visiting her house. A Division Bench of the Calcutta High Court noticed the provisions of Section 90 of the Indian Penal Code and concluded: (Cri.L.J. p.1538, para 7)

> "The failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry we do not know when. If a full-grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. Section 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her.

17. In para 21 of the report in *Uday's* case (supra) it was held as under:-

> "**21.** It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may

> have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

18. It was with reference to the afore-noted observations of the Hon'ble Supreme Court in *Uday's* case (supra), Shri K.K.Sud, learned senior counsel for the petitioner urged that as held in *Uday's* case (supra) it usually happens when 2 young persons were madly in love that they promise to each other several times that come what may they will get married, but when there is evidence to show that the young couple overcome with emotions and passion find themselves in circumstances where they, in a weak moment, succumb to the temptation of having sexual intercourse, promise of marriage loses all significance.

19. Referring to the factual matrix of the FIR, and as noted in para 9 above, counsel urged that ex-facie this is what appears to have happened in this case. That the complainant willingly consented to having sexual intercourse with Satyam with whom she was deeply in love not because he promised to marry her but because she also desired it.

20. In my opinion, learned senior counsel for the petitioner ignored some very vital observations made by the Supreme Court in *Uday's* case (supra) and the latter decision of the Supreme Court in *Deelip Singh's* case (supra) where in certain wide

observations in *Uday's* case (supra) have been explained and clarified.

21. In para 24 of the report in *Uday's* case (supra), their Lordships of the Supreme Court noted a categorical fact. The same, to quote from the judgment is as under:-

> "**24.** There is another difficulty in the way of the prosecution. There is no evidence to prove conclusively that the appellant never intended to marry her."

22. This is a very vital observation in *Uday's* case (supra). The Hon'ble Supreme Court found that there was no evidence to prove conclusively that Uday never intended to marry the prosecutrix.

23. Their Lordships noted that perhaps Uday wanted to marry the prosecutrix but that was not enough. That there was no evidence to prove conclusively that he never intended to marry the prosecutrix.

24. In *Deelip Singh's* case (supra), Section 90 of the IPC was analyzed with reference to the point of view of the victim and the accused. It was noted that the Section could be bifurcated into 2 parts. It was further noted that Section 90 cannot be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code. In para 19 and 20 of the report in *Deelip Singh's* case (supra) it was observed as under:-

> "19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of

> the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.
>
> 20. Section 90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code. The normal connotation and concept of "consent" is not intended to be excluded. Various decisions of the High Court and of this Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word "consent".

25. Noting that observations in para 21 in *Uday's* case (supra) appear to be wide and needed some explanation, in para 28 of the decision in *Deelip Singh's* case (supra), their Lordships of the Supreme Court categorically held as under:-

> "**28.** The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, 'will vitiate the consent'. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the

> promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of *Jayanti Rani Panda v. State of W.B.* 1984 Cri.L.J. 1535 which was approvingly referred to in *Uday's* case (supra). The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri.L.J. p.1538, para 7) - "*unless the court can be assured that from the very inception the accused never really intended to marry her*". (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in *Jaladu case* (vide passage quoted supra). By making the solitary observation that "a false promise is not a fact within the meaning of the Code", it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in *Uday* case as a whole, we do not understand the Court laying down a broad proposition that a 'promise to marry' could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."

26. Indeed, submissions made by Shri K.K.Sud, learned senior counsel for the petitioner focussed on the first two sentences of para 21 of the report in *Uday's* case (supra), which 2 sentences I may note read as under:-

> "**21.** It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code."

27. These two sentences have to be understood as explained by their Lordships of the Supreme Court in *Deelip Singh's* case (supra) (para 28 : quoted above).

28. Their Lordships of the Supreme Court in *Deelip Singh's* case (supra) were at pains to explain that where, from the very inception the accused never really intended to marry the complainant, issue would take entirely different colouration pertaining to consent and misconception of fact as elaborated in Section 90 of the Indian Penal Code.

29. It is in this context, I have specifically noted herein above the finding by their Lordships of the Supreme Court in *Uday's* case in para 24 where their Lordships have returned a categorical finding that there is no evidence to prove that Uday never intended to marry the complainant.

30. A perusal of the FIR shows that the complainant has categorically stated that Satyam had lied to her about his age. Why did he do so? Probably he was aware that if he had truthfully disclosed his age, the complainant would never have consented to even continue the dialogue with him. Probably he found a woman who had lost her first love and was emotionally disturbed.

He played with her.

31. I need not and for that matter should not speculate on the issue for the reason I am not dealing with a case where trial has concluded. Suffice would it be to state that intention of Satyam is alleged to be dishonest from the very inception. Issue would therefore need trial.

32. Under the circumstances, since the issue arises for consideration viz whether from the very inception Satyam never intended to marry the complainant the matter would require a trial.

32. For the law as explained in para 28 in *Deelip Singh's* case (supra), the petition requires to be dismissed.

33. The petition is dismissed.

34. However, I require to pen a post script. Nothing stated in the present order would be construed as an expression on the merits of the controversy. I have dealt with the issue limited to whether the FIR disclosed no cognizable offence; and no more. Since charge sheet has been filed, learned Trial Judge would consider the issue pertaining to framing of charge at the relevant stage in light of the material placed by the prosecution.

October 23, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE